

municipality from responsibility for the relief of such dependent person shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in subsection (2).

(5) Any person in charge of poor relief or any of his assistants who shall receive or solicit any commission or derive or seek to obtain any personal financial gain through any purchase, sale, disbursement or contract for supplies or other property used in the administration of relief shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in section 348.28.

SECTION 2. This act shall take effect upon passage and publication.

Approved July 25, 1933.

No. 849, A.]

[Published July 28, 1933.]

### CHAPTER 469.

AN ACT to create section 76.75 and subsection (5) of section 20.09 of the statutes, relating to an emergency occupational tax on chain stores, providing penalties, and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. A new section is added to the statutes and a new subsection is added to section 20.09 of the statutes to read: 76.75 OCCUPATIONAL TAX ON CHAIN STORES. (1) On and after the effective date of this section and until December 31, 1935, an occupational tax is imposed on the gross income from retail operations of all persons engaged in the chain store business in this state.

(2) Every person engaged in the business of operating or maintaining in this state under the same general management, supervision, or ownership two or more stores, mercantile establishments or places where goods, wares, or merchandise of any kind (including, without limitation because of enumeration, groceries, meats, fruits, vegetables, flowers, clothing, shoes, wearing apparel, dry goods, tobacco products, furniture, hardware, stationery, books, drugs, toilet articles, five cents to a dollar novelties and notions, gasoline, fuel oil, lubricating oil, automobiles, automobile accessories, electric appliances, gas appliances, lumber, coal, building material, machinery, implements, nursery stock,

and seeds) are sold or offered for sale at retail and where the person operating such store, mercantile establishment or place receives the retail profit from the commodities sold therein, shall for the purposes of this section be deemed to be engaged in the chain store business; provided that this section shall not apply to co-operative associations organized under chapter 185 or to limited profit sharing co-operative associations organized under the laws of some other state and conducted on a genuine co-operative basis as defined in section 185.01, or to companies subject to the tax imposed in chapter 76 or to persons, firms or corporations subject to the occupational tax imposed in section 70.41 and 70.42. But any company, as defined in chapter 76, operating or maintaining two or more stores or places where electrical or gas appliances are merchandised, shall be deemed to be engaged in the chain store business. The fact that the several retail stores or mercantile establishments are ostensibly owned or operated by different persons, firms, corporations or associations shall not defeat the application of this section where such stores or establishments are under the same general management, supervision or ownership. Lease and agency and lease and ownership agreements or contracts or operation under a common name shall, unless shown to the contrary, be deemed to constitute operation under the same general management, supervision or ownership.

(3) Every person engaged in the chain store business shall pay an occupational tax on the aggregate gross income from its retail operations in this state, to be computed at the following rates:

(a) Six-twentieths of one per cent of the gross income of one hundred thousand dollars or less;

(b) Seven-twentieths of one per cent on the excess of the gross income over one hundred thousand dollars and not exceeding five hundred thousand dollars;

(c) Eight-twentieths of one per cent on the excess of the gross income over five hundred thousand dollars and not exceeding one million dollars;

(d) Nine-twentieths of one per cent on the excess of the gross income over one million dollars and not exceeding two million dollars;

(e) One-half of one per cent on the excess of the gross income over two million and not exceeding three million dollars;

(f) Eleven-twentieths of one per cent on the excess of the gross income over three million dollars and not exceeding four million dollars;

(g) Twelve-twentieths of one per cent on the excess of the gross income over four million dollars and not exceeding five million dollars;

(h) Thirteen-twentieths of one per cent on the excess of the gross income over five million dollars.

(4) If fifty per cent or more of the gross income of any one store, mercantile establishment or place, maintained or operated by any person engaged in the chain store business is derived from retail operations, they shall be subject to the tax imposed in this section on their entire aggregate gross income derived from retail operations throughout the state. Gross income within the meaning of this section means gross income before deduction of cost of merchandise retailed and before deduction of any expense. Sales in bulk from retail stores directly to consumers shall be deemed to be retail sales. Gross income as used in this section shall not be construed to include any income derived from rentals on real estate.

(5) Every person engaged in the chain store business shall file with the tax commission a written report on or before the thirtieth day of January of each year, (except that reports for fiscal years ending on some other date than December thirty-first, shall be furnished within thirty days after the last day of such fiscal year) in such manner and form and setting forth such facts as said commission shall deem necessary to enforce the provisions of this section. Such report shall be made upon the oath or affirmation of the president, vice president, or other principal officer or the chief officer within this state, and in case of any such business in liquidation or in the hands of a receiver, such report shall be made upon the oath or affirmation of the person responsible for the conduct of the affairs of such business. The reports required to be filed on or before January 30, 1934, shall report gross income for the period prior to January 1, 1934. Whenever a fiscal year ends on some date between July 1, 1933, and December 31, 1933, a report shall be filed on or before January 30, 1934, reporting the gross income for the period prior to January 1, 1934.

(6) It shall be the duty of the tax commission, from such reports and from such additional information as it may obtain, to ascertain the amount of taxes due, and to certify to every person,

firm, or corporation engaged in the chain store business, and also to the state treasurer, the amount of taxes due under this section. The tax so certified shall be paid to the state treasurer within fifteen days after certification.

(7) Any person required by this section to file a report, failing to file such report within the time prescribed by law, or failing to make the required report or making an incorrect, false or fraudulent report, with intent in either case to defeat or evade the tax imposed by this section, or any officer of any firm or corporation who makes a false or fraudulent report with intent to defeat or evade the assessment required to be made by this section, shall be subject to the same penalties and increased assessment as are provided in the case of income tax returns in section 71.09, and the provisions of said section so far as applicable hereto shall apply.

(8) The tax commission or any duly authorized employe thereof is authorized to examine the books, records, papers and files, within or outside of this state, of any person engaged in the chain store business. It shall have the power to examine witnesses under oath to verify the accuracy of any return made under the provisions of this section or to ascertain whether or not any tax is due which has not been paid. The commission shall also have the power to institute legal proceedings for the purpose of ascertaining the amount of the tax due and to enforce collection, with the penalties thereon. The commission may, at or after the commencement of an action for the purpose of collecting the amount of tax and penalties and interest due, have an attachment against the property of the defendant, including garnishees, without the execution of a bond upon the filing of an affidavit showing the nature of the claim, that it is just, the sum which the commission believes the plaintiff ought to recover and that the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found.

(9) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax herein imposed upon any ground whatever, but the aggrieved taxpayer shall pay the tax as and when due and if paid under protest at any time within two years from the date of such payment sue the state treasurer in an action at law to recover the tax so paid, with interest at six per cent thereon, from the date of payment. If it is finally determined that said tax, or any part thereof, was wrongfully

collected for any reason, it shall be the duty of the state treasurer then in office to pay the amount of such tax adjudged to have been wrongfully collected, together with interest thereon at the rate of six per cent per annum out of the general fund of the state to the taxpayer entitled thereto. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made, and which are not barred by the limitation of two years herein imposed.

(10) The tax imposed in this section shall be additional to the tax imposed in chapter 78, notwithstanding the provisions of section 78.28, and shall also be additional to all property and income taxes levied and assessed on such persons, except that on the tax due under this section on gross income during the period prior to January 1, 1934, credit shall be allowed for any emergency chain store tax assessed and paid for the year 1933 under chapter 29, laws of the special session 1931-1932. In the payment of occupational taxes on gross incomes subsequent to January 1, 1934, credit shall be allowed for all taxes paid during the year for which such occupational tax is due, on merchants' stock in stores fifty per cent or more of whose gross income is derived from retail operations. Each person, firm or corporation claiming such credit shall file with the tax commission a statement certified to and furnished without extra charge by the clerk of the city, village or town wherein personal property taxes were paid, showing the personal property taxes paid, the valuation of all personal property, and the valuation of all merchants' stock in such retail stores. The tax commission shall determine what part of the total tax paid on all such personal property is attributable to merchants' stock.

(11) All provisions of this section, and particularly the credit for taxes paid on merchants' stock as provided in subsection (10), shall be deemed severable and if any of these provisions or their application to any person or circumstances are held invalid, the remainder of the section and the application of such provisions to other persons or circumstances shall not be affected thereby.

(20.09) (5) Annually, beginning July 1, 1933, twenty thousand dollars for the performance of its duties in administering the occupational tax on chain stores under section 76.75.

SECTION 2. If it is finally determined that the occupational tax on chain stores imposed in section 1 of this act is invalid,

either in its entirety or in its application to any particular person or group, then such person shall immediately be required to secure a license and pay a license fee as hereinafter provided, effective as of July 1, 1933.

(1) Every person engaged in the business of operating or maintaining in this state under the same general management, supervision, or ownership two or more stores, mercantile establishments, or places where goods, wares, or merchandise of any kind (including, without limitation because of enumeration, groceries, meats, fruits, vegetables, flowers, clothing, shoes, wearing apparel, dry goods, tobacco products, furniture, hardware, stationery, books, drugs, toilet articles, five cents to a dollar novelties and notions, gasoline, fuel oil, lubricating oil, automobiles, automobile accessories, lumber, coal, building material, machinery, implements, nursery stock, and seeds) are sold or offered for sale at retail and where the person operating such store, mercantile establishment or place receives the retail profit from the commodities sold therein shall for the purposes of this section be deemed to be engaged in the chain store business. The fact that the several retail stores or mercantile establishments are ostensibly owned or operated by different persons, firms, corporations or associations shall not defeat the application of this section where such stores or establishments are under the same general management, supervision or ownership. Lease and agency and lease and ownership agreements or contracts or operation under a common name shall, unless shown to the contrary, be deemed to constitute operation under the same general management, supervision or ownership.

(2) No person shall engage in the chain store business in this state unless he shall first have secured a license to engage in such business from the department of agriculture and markets. Such license shall be issued for the calendar year and shall be renewable annually.

(3) Application for a license shall be made on a form to be prescribed and furnished by the department of agriculture and markets and shall set forth the name of the applicant, the name and the specific location of each retail store, mercantile establishment, or place operated or proposed to be operated in this state, and such other facts as the department may require.

(4) The fee for a license to engage in the chain store business shall be as follows:

(a) Ten dollars for each store in excess of one but not to exceed five.

(b) Twenty-five dollars for each store in excess of five but not to exceed ten;

(c) Fifty dollars for each store in excess of ten but not to exceed twenty;

(d) One hundred dollars for each store in excess of twenty.

(5) Every license issued prior to the first day of July in any year shall be charged for at the full rate prescribed in subsection (4), and every license issued on or after the first day of July shall be charged for at one-half of such full rate.

(6) A person engaged in the chain store business may after securing his annual license acquire, open or establish additional stores upon application for an extension of the license to cover such stores and the payment of the prescribed fees, which shall be computed upon the basis of the whole number of stores operated by such licensee in the state. Licenses shall not be transferable from one location to another or from one person to another.

(7) Upon application and the payment of the prescribed license fee, the department of agriculture and markets shall issue to the applicant a separate license for each store operated in the state. Each licensee shall display the license so issued in a conspicuous place in the store designated in such license.

(8) All licenses shall expire on the thirty-first day of December of each year, and application for a renewal of the license shall be made in the same manner as for an original license and shall be allowed upon payment of the prescribed fees.

(9) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five nor more than one hundred dollars, and the illegal operation of each retail store or mercantile establishment for each and every day that such violation shall continue shall constitute a separate and distinct offense.

(10) It shall be the duty of the department of agriculture and markets to enforce the provisions of this section and it shall report violations to the attorney-general and the district attorney for prosecution.

(11) No order shall be issued by any court to restrain or delay the enforcement of this section at the suit of the person, firm, corporation or association required to procure a license hereunder, but such aggrieved person shall pay the license fee as and when

due, and if paid under protest may at any time within two years from the date of such payment sue the state in an action at law to recover the fee so paid, with legal interest thereon, from the date of payment. If it is finally determined that said fee, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the secretary of state to issue his warrant on the treasurer for the amount of such fee so adjudged to have been wrongfully collected, together with interest thereon, and the treasurer shall pay same out of the general fund. A separate suit need not be filed for each separate payment by any licensee, but a recovery may be had in one suit for as many payments as may have been made, and which are not barred by the limitation of two years herein imposed.

SECTION 3. It is the intent of the legislature that in the event that the provisions of section 1 of this act are finally declared invalid as to any person or group, such person or group shall be required to pay the license fees prescribed in section 2 the same as if said section took effect on July 1, 1933, except for such period for which such person shall have paid a license fee under chapter 29, laws of the special session of 1931-32. It is also the intent of the legislature that in the event that section 2 of this act takes effect by reason of section 1 being declared invalid, the emergency board shall provide such funds for the department of agriculture and markets as may be necessary to carry out its functions under section 2 of this act.

SECTION 4. This act shall take effect upon passage and publication and shall terminate on December 31, 1935.

Approved July 25, 1933.

No. 886, A.]

[Published July 28, 1933.]

## CHAPTER 470.

AN ACT to repeal, amend, and create various subsections and sections of the statutes, relating to appropriations, fees, and other revenues.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Paragraph (b) of subsection (1) of section 20.09, subsection (4) of section 20.12 and paragraph (e) of subsection (12) of section 70.11 of the statutes are repealed. Any balance in appropriation made in subsection (4) of section 20.12,